



TRIBUNAL CONSTITUCIONAL

Gabinete del Presidente

Oficina de Prensa

NOTA INFORMATIVA Nº 69/2013

THE CONSTITUTIONAL COURT REJECTS THE RECUSALS FILED BY OTEGI AND USABIAGA AGAINST ITS PRESIDENT

The Plenary Meeting of the Constitutional Court has outright rejected the recusals requested by Arnaldo Otegi and Rafael Díez Usabiaga against its President due to his former political affiliation. The appellants alleged the existence of cause for recusal foreseen in Article 219.10 of the Organic Act of the Judiciary [LOPJ] (*“holding a direct or indirect interest in the suit or case”*). The decision included a dissenting minority vote by Magistrate Luis Ignacio Ortega.

In both of these decisions, the Constitutional Court reproduces the legal arguments which it already explained in the rulings that put an end to the ancillary suits for recusal filed by the Government and the Parliament of Catalonia. In this sense, it reminds that *“the Constitution does not prohibit constitutional court magistrates from membership in political parties or labour unions, but rather only establishes the status of member of the Constitutional Court is incompatible with the performance of management functions in a political party or in a labour union, and with employment in the service thereof,”* a regulation which is “comparable” to those of Germany, France, Italy and Portugal and conformant with the case-law of the European Court of Human Rights.

The Plenary Meeting also points out that the appellants failed to fulfil the *“essential requirement”* of stating in their writs, *“specifically and clearly, “the reasons upon which the recusal is based, or that of including “initial evidence on them.”* Constitutional Court doctrine requires that, in order to find that the grounds for recusal foreseen in Art. 219.10 LOPJ do exist, *“it must involve an individualised interest with regard to the specific proceeding in which the recusal is proposed, and it must be current, or in other words, existing at the time when the magistrate’s removal is requested by way of his recusal.”*

At the same time, the recusal requested by Otegi is extemporaneous, because the time period foreseen by law for filing the ancillary suit was exceeded. This time period is calculated as of the moment when one becomes aware of the facts constituting grounds for the recusal.

Madrid, 28 October 2013